

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DIANE ORN,)
Plaintiff,)
v.) Case No. _____
COMENITY BANK,)
Defendant.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Comenity Bank, removes this case from the Court of Common Pleas of Luzerne County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania. In support of this Notice of Removal, Comenity Bank (“Comenity”) states as follows:

I. BACKGROUND

1. On or about July 7, 2017, plaintiff Diane Orn (“Plaintiff”) initiated this action by filing a complaint (the “Complaint”) against Comenity in the Court of Common Pleas of Luzerne County, Pennsylvania, which was styled *Diane Orn v. Comenity Bank*, Case No. 201708137 (the “State Court Action”).

2. Comenity was served with the Complaint on July 17, 2017. No other documents have been filed in the State Court Action. Pursuant to 28 U.S.C. § 1446(a), Comenity has attached true and correct copies of “all process, pleadings, and orders served” upon Comentiy in the State Court Action as Exhibit A.

3. In the Complaint, Plaintiff cites the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* Plaintiff alleges that Comentiy made calls to Plaintiff’s cellular telephone in violation of the TCPA, and based thereon, raises one cause of action for violation of the TCPA. *See* Compl. at ¶¶ 6-22.

II. BASIS FOR REMOVAL JURISDICTION

4. This Court has original jurisdiction under 28 U.S.C. § 1331 as Plaintiff alleges violations of a claim or right arising under the laws of the United States.

5. Specifically, Plaintiff alleges that Comenity made calls to Plaintiff’s cellular telephone in violation of the TCPA. *See generally* Compl.

6. Therefore, the Complaint alleges violations of a claim or right arising under the laws of the United States, and as such, this action is subject to removal pursuant to 28 U.S.C. §§ 1331 and 1441 at the request of Comenity.

III. VENUE

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and 1441(a), because the United States District Court for the Middle District of

Pennsylvania is the federal court embracing the Court of Common Pleas of Luzerne County, Pennsylvania, where Plaintiff originally filed the State Court Action.

IV. PROCEDURAL COMPLIANCE

8. Plaintiff served Comenity by mailing a copy of the complaint to Comenity on July 17, 2017. *See* Ex. A.

9. This Notice is timely because it has been filed within the thirty day period prescribed by 28 U.S.C. § 1446(b).

10. The time for Comenity to answer, move, or otherwise plead in the State Court Action in response to the Complaint has not yet expired, and Comenity has not answered, moved, or otherwise responded to the Complaint.

11. The documents attached hereto as Exhibit A constitute all of the process, pleadings, and orders received by Comenity to date.

12. Written notice of the filing of this notice of removal is being forwarded to Plaintiff and to the Court of Common Pleas of Luzerne County, Pennsylvania, pursuant to 28 U.S.C. § 1446(d). *See* Notice of Filing Notice of Removal, attached hereto as Exhibit B.

13. By filing a Notice of Removal in this matter, Comenity does not waive its right to object to service of process, the sufficiency of process,

jurisdiction over the person, or venue, and Comenity specifically reserves the right to assert any defenses and/or objections to which it may be entitled.

14. Without conceding the availability of any particular remedy or category of damages, this action involves a controversy arising under the laws of the United States, as appears from the allegations of Plaintiff's Complaint. Accordingly, this action is one over which this District Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and this matter may be removed to this Court under 28 U.S.C. § 1441.

WHEREFORE, notice is given that this action is removed from the Court of Common Pleas of Luzerne County, Pennsylvania, to the United States District Court for the Middle District of Pennsylvania.

Dated: August 16, 2017

Respectfully submitted,

By: /s/ Martin C. Bryce
Martin C. Bryce, Jr. Esquire (Pa. ID 59409)
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: (215) 665-8500
Facsimile: (215) 864-8999
bryce@ballardspahr.com

Attorneys for Defendant Comenity Bank

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Comenity Bank's Notice of Removal was served by U.S. Mail, postage prepaid, on this date upon the following:

Brett Freeman, Esq.
SABATINI LAW FIRM, LLC
216 N. Blakely Street
Dunmore, PA 18512
Phone: (570) 341-9000
Facsimile: (570) 504-2769
Email: bfecf@bankruptcypa.com
Attorneys for Plaintiff

By: /s/ Martin C. Bryce
Martin C. Bryce, Jr.,

Dated: August 16, 2017

EXHIBIT A

Diane Orn
100 E. 6th St., Apt. 605
Wyoming, PA 18644,

Plaintiff

v.

Comenity Bank
One Righter Parkway, Suite 100
Wilmington, DE 19803,

Defendant

IN THE LUZERNE COUNTY
COURT OF COMMON PLEAS

Civil Action

No.

201708137

Jury Trial Demanded

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claim set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED RATE OR NO FEE.

AVISO

A USTED SE LE HA DEMANDADO EN LA CORTE. Si usted quiere defenderse contra la demanda expuesta en las siguientes páginas, tiene que tomar acción en un plazo de veinte (20) días después que reciba esta demanda y aviso, por presentar una notificación de comparecencia escrita personalmente o por un abogado y radicar por escrito en la Corte sus defensas u objeciones a las demandas presentadas en su contra. Se le advierte que si falla en hacerlo, el caso podría seguir adelante sin usted y un fallo podría ser dictado en su contra por la Corte sin previo aviso por cualquier dinero reclamado en la demanda o por cualquier otro reclamo o desagravio pedido por el/la demandante. Puede

que usted pierda dinero o propiedad u otros derechos importantes para usted. USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO, DIRÍJASE O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ABAJO. ESTA OFICINA PUEDE PROVEERLE CON INFORMACIÓN SOBRE COMO CONTRATAR UN ABOGADO. SI NO TIENE LOS FONDOS SUFICIENTES PARA CONTRATAR UN ABOGADO, ESTA OFICINA PODRÍA PROPORCIONARLE INFORMACIÓN ACERCA DE AGENCIAS QUE PUEDAN OFRECERLES SERVICIOS LEGALES A PERSONAS QUE REÚNAN LOS REQUISITOS A UN HONORARIO REDUCIDO O GRATIS.

North Penn Legal Services, Inc.
33 N. Main Street,
Suite 200
Pittston, PA 18640
(570) 299-4100
(877) 953-4250 Toll free
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101 West Broad Street,
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Diane Orn,	IN THE LUZERNE COUNTY COURT OF COMMON PLEAS
Plaintiff	Civil Action
v.	No.
Comenity Bank,	Jury Trial Demanded
Defendant	

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (hereinafter "the Act"). Defendant made multiple calls to Plaintiff on a number assigned to a cellular telephone service using equipment regulated by the Act.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), which permits an action for a violation of the Act to be brought in an appropriate state court.

3. Venue in this Court is proper in that Plaintiff resides here, the conduct complained of occurred here, and Defendant transacts business here.

III. PARTIES

4. Plaintiff is a natural person residing at 100 E. 6th St., Apt. 605, Wyoming, PA 18644.

5. Defendant, Comenity Bank, is a corporation with a place of business located at One Righter Parkway, Suite 100, Wilmington, DE 19803. At all relevant times, Defendant placed calls to individuals in this state.

IV. STATEMENT OF CLAIM

6. Plaintiff is, and at all relevant times was, a "person" as defined by 47 U.S.C. § 153(39).

7. Defendant is, and at all relevant times was, a "person" as defined by 47 U.S.C. § 153(39).

8. Plaintiff has a cellular telephone number that she has had at all relevant times. Plaintiff has only used this number as a cellular telephone number, and does not believe that it was ever ported from a wireline service.

9. At all relevant times this phone number has been assigned to a cellular telephone service.

Count I- Violation of the Act

10. The foregoing paragraphs are incorporated herein by reference.

11. Congress enacted the Act to prevent real harm. Congress found that "automated or pre-recorded calls are a nuisance and an invasion of privacy, regardless of the type of call" and decided that "banning" such calls made without consent was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion."

12. Defendant caused to be made an unknown number of calls to Plaintiff's cell phone number.

13. Defendant's phone calls harmed Plaintiff by causing the very harm that Congress sought to prevent—a "nuisance and invasion of privacy."

14. Defendant's phone calls harmed Plaintiff by trespassing upon and interfering with Plaintiff's rights and interests in Plaintiff's cellular telephone and Plaintiff's cellular telephone line.

15. Defendant's phone calls harmed Plaintiff by intruding upon Plaintiff's seclusion.
16. The calls made to Plaintiff's cell phone were made using either an automatic telephone dialing system, as that term is defined in 47 U.S.C. § 227(a)(1), or an artificial or prerecorded voice. The factual allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.
17. These telephone calls were not made for "emergency purposes", as defined in 47 C.F.R. § 64.1200.
18. These telephone calls were not made with the Plaintiff's prior express consent.
19. These telephone calls were placed while Plaintiff was in the United States.
20. Pursuant to 47 U.S.C. § 227(b)(3), Plaintiff is entitled to an award of \$500.00 in statutory damages for each and every call Defendant caused to be made to Plaintiff's cellular telephone number.
21. Plaintiff is also entitled to increased damages, as these calls were made willfully and/or knowingly. The factual allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.
22. For each violation that was made willfully and/or knowingly, the Court may, in its discretion, increase the amount of the award to an amount equal to, but not more than, \$1,500.00 per call.

WHEREFORE, Plaintiff demands judgment against Defendant for statutory damages between \$500.00 and \$1,500.00 per call, costs, equitable relief, and such other and further relief as the Court deems just and proper.

V. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.



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216 N. Blakely St.
Dunmore, PA 18512
Attorney for Plaintiff
Phone (570) 341-9000

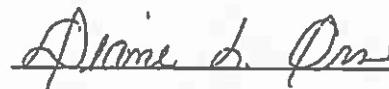
**Verification of Complaint and Certification
by Plaintiff Diane Orn**

Plaintiff, Diane Orn, being duly sworn according to law, deposes as follows:

1. I am the plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass the Defendant, cause unnecessary delay to the Defendant, or create a needless increase in the cost of litigation to the Defendant, named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 7, 2017.



Diane Orn, Plaintiff

EXHIBIT B

By: Martin C. Bryce, Jr., ID No. 59409
Elanor A. Mulhern, ID No. 322185

Counsel for Defendant

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DIANE ORN

Plaintiff,

v.

COMENITY BANK

Defendant.

COURT OF COMMON PLEAS OF
LUZERNE COUNTY

CIVIL ACTION NO: 201708137

NOTICE OF FILING NOTICE OF REMOVAL

TO THE PROTHONOTARY:

PLEASE TAKE NOTICE that Defendant Comenity Bank, has removed this case to the United States District Court for the Middle District of Pennsylvania. Pursuant to 28 U.S.C. § 1446(d), "the State court shall proceed no further unless and until the case is remanded." A copy of the Notice of Removal filed in the United States District Court is attached as Exhibit 1.

Respectfully Submitted,

Dated: August 16, 2017

/s/ Elanor A. Mulhern
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Attorney for Defendant Comenity Bank

CERTIFICATE OF SERVICE

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Attorneys for Plaintiff

/s/ Elanor A. Mulhern
Elanor A. Mulhern